

**REMARKS**

Claims 1 - 6 are pending in this application. By this Amendment, claims 5 and 6 have been amended in order to more particularly point out, and distinctly claim the subject matter to which the applicants regard as their invention. The applicants respectfully submit that no new matter has been added. It is believed that this Response is fully responsive to the Office Action dated September 7, 2001.

**35 U.S.C. §112, Second Paragraph, Rejection:**

In item 5 of the Office Action, claims 5 and 6 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This rejection is respectfully traversed.

Applicants respectfully submit that the amendments to claims 5 and 6 overcome the rejection of claims 5 and 6 under 35 U.S.C. §112, second paragraph. Accordingly, withdrawal of the rejection of claims 5 and 6 under 35 U.S.C. §112, second paragraph, is respectfully solicited.

As To The Merits:

As to the merits of this case, the Examiner sets forth the following rejection:

claims 1-6 stand rejected under 35 U.S.C. § 103(c) as being unpatentable over the applicant's admission of prior art in view of Weber (U.S. Patent No. 4,319,134).

This rejection is respectfully traversed.

With regard to the applicant's admission of prior art, the Examiner acknowledges that "the applicant's admission of prior art does not disclose a plurality of windows disposed on the same radius with a length being shorter from the inner to outer peripheral side and the inner and outer opening areas being equal so the areas of different phases are the same."

To compensate for such deficiencies of the applicant's admission of prior art, the Examiner relies on the secondary reference of Weber.

However, Weber fails to disclose or fairly suggest the significant structural arrangements of the applicants' claimed invention concerning *the length of the said light receiving windows in the radial direction is set so as to gradually become shorter from the inner peripheral side toward the outer peripheral side*, as called for in claim 1. Instead, as illustrated in Fig. 4 of Weber, portions 35 in the radial direction have the same length.

In addition, Weber does not disclose the effect such as "the diameter of the rotary slit disk 1 can be designed in line therewith."

This composition and effect are not recognized as being within the level of ordinary skill in the art.

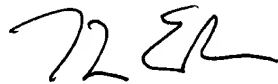
Further, Weber does not disclose the "light receiving portions" in claim 4. More specifically, Weber does not disclose the construction where the fixed slit and light receiving elements are made common, that is, the construction where a slit is formed on a light receiving element. Thus, Weber does not disclose the effect that the encoder can be small in size.

Thus, for at least these reasons, it is respectfully asserted that the prior art fails to teach or suggest recitations of claims 1 - 6, and request that the Examiner allow these claims, along with the entire application, to issue. Accordingly, withdrawal of the rejection of claims 1 - 6 under 35 U.S.C. §103(a) is respectfully solicited.

If, for any reason, it is believed that this application is not now in condition for allowance, the Examiner is requested to contact Applicant's undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. The fees for such an extension or any other fees which may be due with respect to this paper, may be charged to Deposit Account No. 01-2340.

Respectfully submitted,  
ARMSTRONG, WESTERMAN & HATTORI, LLP



Thomas E. Brown  
Attorney for Applicant  
Reg. No. 44,450

Atty. Docket No. 000754  
Suite 1000  
1725 K Street, N.W.  
Washington, D.C. 20006  
Tel: (202) 659-2930  
TEB

Enclosure: Version with Markings to Show Changes Made

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**In the Specification:**

Paragraph beginning at page 1 line 2 has been amended as follows:

~~Technical field of the invention~~ BACKGROUND OF THE INVENTION

The following the paragraph between lines 8 and 9 at page 2 has been inserted:

Brief Summary Of The Invention

Paragraph beginning at page 4, line 8, has been amended as follows:

~~Brief description of the invention~~ Brief Description of the Drawings

Paragraph beginning at page 5 line 15 has been amended as follows:

~~Best mode for carrying out the invention~~ Description of the Preferred Embodiments

**In the claims:**

Claims 5 and 6 have been amended as follows:

5. (Amended) An encoder as set forth in Claim 4, wherein said light receiving ~~windows~~ portions are a group of light receiving ~~windows~~ portions consisting of a plurality of light

receiving ~~windows~~ portions disposed on the same radius at the same phase, and the total sum of the opening areas of light receiving ~~windows~~ portions of the same phase and the total sum of light receiving ~~windows~~ portions of the other phase are set to be equal to each other.

6. (Amended) An encoder as set forth in Claim 5, wherein said groups of light receiving ~~windows~~ portions are disposed in a plurality on the same radius.